IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.197 OF 2005
IN
WRIT PETITION NO.3258 OF 2004

P.K. Mohammed of Mumbai ....Appellant
V/s.
State of Maharashtra & Ors. ....Respondents

Mr.Anirudh Joshi i/b M/s.Meghraj & Associates for the Appellant.

Mr.Milind More, A.G.P. for Respondent Nos.1 to 3 and 6.

Ms.Preeti Purandare for Respondent Nos.4 and 5 (Municipal Corporation)

CORAM : A.P. SHAH AND
S.J. VAZIFDAR, JJ.
DATED : 5TH APRIL, 2005.

P.C. :

. Heard the learned counsel appearing for the parties. Perused the records including the order of the learned single Judge.

2. This Appeal is filed by one Balbir Singh Chib, who claims to be the power of attorney holder of the Appellant - P.K. Mohammed. The address of the Appellant is not disclosed either in the Writ Petition or in the present Appeal and it seems that the

whereabouts of the Appellant are not known. It appears that the said Balbir Singh Chib has erected an unauthorised structure of 47 ft. x 21 ft. at Juhu Beach where he has started running a restaurant by name "Sea Magic Restaurant". When this unauthorised structure came to the notice of the competent authority, a show case notice dated 6.4.2002 was issued under Section 39(Z)(1) of the Maharashtra Slum (Improvement Clearance Redevelopment) Act, 1971 as amended by an Ordinance No.20 of 2001 was issued to the said Balbir Singh Chib either to produce documentary evidence to show that the said structure was authorised structure and on failure to do so, to demolish the same on his own within a period of 24 hours from the date of the said show cause notice.

3. Pursuant to the notice, Balbir Singh Chib appeared before the competent authority when he was heard and he also produced certain documents in support of his case. It appears that Balbir Singh Chib claimed that he has purchased this structure from the Appellant - P.K. Mohammed. He produced a xerox copy of the photopass issued to the said P.K. Mohammed under the Slum Census of 1990. On the scrutiny of the photopass, it was noticed that the said photopass issued to P.K. Mohammed was in respect

of a residential kachha structure admeasuring 40 ft. x 20 ft. situated at Navjivan Zopadpatti, Santacruz (West), Mumbai. It was further noticed that the address appearing on the xerox copy of the photopass had been altered from Navjivan Zopadpatti to Juhu Gaothan Patel Compound. It was also noticed that the measurement of the said structure is different than the structure in respect of which the photopass was issued to P.K. Mohammed. It was also noticed that the said Balbir Singh Chib had obtained eating registrations licenses from the Commissioner of Police on the basis of this photopass. The competent authority accordingly confirmed the demolition notice and the structure was demolished.

4. In the present Appeal, the main contention of the Appellant is that the structure in question was erected prior to 1.1.1995 and as such it is a protected structure. In support of this contention he has relied on a repair permission dated 22.6.1994 allegedly granted by the B.M.C. In response to the enquiry made by the competent authority, the Assistant Engineer (B & F) K Ward had informed vide his letter dated 26.12.2002 that the repair permission was not issued by the Corporation. Ms.Purandare, the standing counsel for the Municipal Corporation, who appeared

before us confirmed that the repair permission relied upon by Balbir Singh Chib has not been issued by the Municipal Corporation. Under the circumstances the submission that the structure is a protected structure cannot be accepted. Appeal is accordingly dismissed.

5. It is noticed that the said Balbir Singh Chib has produced fabricated and tampered record so as to give the same in judicial proceedings. His intention appears to obtain unfair advantage of the protection policy. On perusal of the relevant record, we are prima-facie of the opinion that this is a fit case in which cognizance of the offence of perjury may be taken by this Court. It appears that said Balbir Singh Chib has made a false declaration in the Petition regarding the permission granted to him by the Corporation, which is not a real fact to his knowledge. The acts of the said Balbir Singh Chib would prima-facie constitute an offence punishable under Section 193 of the Indian Penal Code. This act also tantamount to criminal contempt. We therefore, direct the Registry to issue the notice to the said Balbir Singh Chib as to why appropriate proceedings should not be initiated against him for the offence under Section 193 of the Indian Penal Code and why he be not punished for the said offence and also a notice

under Section 2 read with Section 12 of the Contempt of Courts Act, 1971 and read with Article 215 of the Constitution. Notice be made returnable on 13th June, 2005.